



File Code: 1570 (218)  
#15-01-00-0015

Date: March 27, 2015

Dick Artley  
415 NE 2nd Street  
Grangeville, ID 83530

Dear Mr. Artley:

This letter is in response to your objection of the Strychnine Pine project located on the Palouse Ranger District of the Nez Perce/Clearwater National Forests. I have read your objection and reviewed the Environmental Assessment (EA), the draft Decision Notice (draft DN), the project file, as well as considered the comments submitted during the opportunities for public comment for this project. Based on this review, conducted in accordance with 36 CFR 218, I understand the disclosed environmental effects of this project.

The 36 CFR 218 regulations provide for a pre-decisional administrative review process in which the objector provides sufficient narrative description of the project, specific issues related to the project, and suggests remedies that would resolve the objection (36 CFR 218. 8). The regulations also allow, in part, for the parties to meet in order to resolve the issues (36 CFR 218.11(a)).

As specified at 36 CFR 218. 11(b), I must provide a written response that sets forth reasons for the response; however, this written response need not be point-by-point. The Responsible Official and I have reviewed the project in light of the issues presented in your objection letter. I have considered your issues and suggested remedies and included my reasons for response to these issues and suggested remedies, which are detailed below.

### **RESOLUTION MEETING**

Title 36 CFR 218 regulations allow for the parties to meet in order to discuss and possibly resolve the issues raised in the objection. In your objection you did not request to have a meeting with me to discuss this project, and you did not contact the Regional Objection Coordinator to schedule a meeting after I offered to host a resolution meeting in my February 25, 2015 letter accepting your objection. Therefore, I will assume you declined my offer to try to resolve your objection.

### **OVERVIEW OF PROJECT**

The Strychnine Pine project was designed to achieve the following purposes (draft DN, pp. 1 and 2):

- Start the trend to restore white pine and other seral tree species in order to improve species diversity and balance vegetation successional stages;
- Reintroduce fire into fire dependent ecosystems;
- Improve water quality and soil productivity; and
- Update fish/water quality standards

To achieve these purposes of the project, the Forest Supervisor is proposing to implement Alternative 2 (draft DN, p. 3), which, if implemented, would:



- Decommission roads, place other roads into storage, improve stream crossings, and amend Appendix K of the Clearwater Forest Plan;
- Conduct regeneration harvest treatments on an estimated 1,800 acres, conduct site prep, and then plant early seral species; and
- Slash and burn approximately 120 acres.

## **RESPONSE TO ISSUES**

**Issue 1:** *The objector contends that the Forest improperly analyzed the direct and indirect effects of selecting the No Action Alternative (Alternative 1) on watershed, fisheries and wildlife conditions within the project area in violation of NEPA and the regulations at 40 CFR §§ 1500.2(b), 1501.2(a). Specifically, the objector alleges that should no action be taken, there would be no negative effects to watershed, fisheries, and wildlife, and that the Responsible Official emphasized harmful effects “to make selection of the Proposed Action appear better for the environment than was actually the case.”*

**Response:** While a no-action alternative is required in the drafting of an Environmental Impact Statement (EIS), 40 CFR § 1502.14(d), there is no similar requirement for an Environmental Assessment (EA). However, the Forest Service Handbook (FSH) notes that the effects of a no-action alternative *may* be documented as follows:

*The EA may document consideration of a no-action alternative through the effects analysis by contrasting the impacts of the proposed action and any alternatives with the current condition and expected future condition if the proposed action were not implemented. FSH 1909.15 (10)(14.2), citing 36 CFR § 220.7(b)(2)(ii).*

Here, the Forest considered Alternative 1 in detail and noted that this alternative provides a baseline for comparing the environmental consequences of the other alternatives to the existing conditions within the project area. *See* Draft Decision Notice (Draft DN), p. 8. The Forest then described the trends that would likely continue should Alternative 1 be selected, and analyzed the direct, indirect, and cumulative effects of selecting this alternative compared to each action alternative for each resource area considered in detail (Strychnine Pine EA, p. 21 and Chapter 4). Contrary to the objector’s allegations, the Forest described both potentially detrimental *and* potentially beneficial trends that would likely continue should Alternative 1 be selected and the proposed action is not implemented. *Id.* For these reasons, I find that the Forest’s analysis follows the direction of the regulations and the FSH with respect to analyzing the effects of the no-action alternative, and no further discussion or direction to the Responsible Official is necessary.

**Issue 1A:** *The objector also contends that the Forest Service’s analysis on Alternative 1 was biased and not based on best science in violation of the regulations at 40 CFR § 1500.1(b), and that the EA does not comply with the requirements at 40 C.F.R § 1502.24.*

**Response:** The regulations at 40 CFR § 1502.24 require agencies to “identify any methodologies used and [] make explicit reference by footnote [or in an appendix] the scientific and other sources relied upon for conclusions in the statement.” However, this section applies to the drafting of an EIS only. Here, the Forest prepared an EA and found that project’s effects were not significant. Thus, the Forest was not required to prepare an EIS and the requirements of section 1502.24 do not apply.

With respect to the objector's claim that the Forest's analysis was biased and not based on best science, the Forest documented its consideration of science and other literature submitted by the public. *See* Draft DN, p. 17. The Forest also provided a response to this issue in the Response to Comments section included in the Draft DN (Appendix A, p. A-6, Response to Comment 14). Based on my review of the Strychnine Pine EA, the Draft DN, and the content in the project file, I find that the issue and suggested remedy do not require further discussion or instructions to the Responsible Official.

**Issue 2:** *The objector contends that the EA indicates there will be clear-cut silvicultural prescriptions associated with the selected alternative for the Strychnine Pine timber sale. The objector maintains that the following required disclosures mandated by National Forest Management Act (NFMA) are not included in the pre-decisional EA.*

*The objector requested that the Responsible Official include the following information in the final EA:*

- *data, text and maps demonstrating that protection is provided for streams, stream-banks, lakes, wetlands, and other bodies of water from detrimental changes in water temperatures, blockages of water courses, and deposits of sediment,*
- *data and maps demonstrating that cut blocks, patches, or strips are shaped and blended to the extent practicable with the natural terrain, and*

**Response:** The Forest has been responsive to the objector's concerns and included the NFMA disclosures in the Draft DN (pp. 14-17).

The project analysis also clearly describes how the Forest will utilize design and mitigation measures such as INFISH buffers, and follow Idaho BMPs, in order to protect waterbodies from detrimental changes in water temperatures, blockages and deposits of sediment in areas where harvest will occur. Strychnine Pine EA, pp. 26-27, 108-109, 112-113; Watershed Specialist Report (docs 12a01 and 12a02); *see also* Draft DN, pp.3-4, 15(2)(C). The Forest notes that BMPs applied to prevent sediment delivery from roads used and maintained for timber harvest activities have high implementation and effectiveness rates, averaging 99% and 98%, respectively. *See* Strychnine Pine EA, p. 26.

While the project file indicates that the Landscape Architect's report has not been finalized, the Forest developed mitigation measure number 19 to ensure that cut blocks, patches, or strips are shaped and blended to the extent practicable with the natural terrain, as required by NFMA. Specifically, mitigation measure number 19 will meet the Forest Plan's Visual Quality Objectives by requiring harvest units to be blended with the natural terrain and laid out, as practicable, to emulate natural disturbance patterns. The project analysis and draft DN also note that a Landscape Architect will assist in the final layout and design of the harvest units. *See* Strychnine Pine EA, p. 30; Draft DN, pp. 5-6, 16(3)(C).

**Instruction:** The Landscape Architect's report has not been finalized. Therefore, I am instructing the Responsible Official to finalize the Landscape Architect's report and include it in the final project record. The findings of the report should also be discussed in the errata to the Strychnine Pine EA.

**Issue 3:** *The objector contends that the Forest violated the NFMA by failing to disclose how the proposed seedtree and shelterwood silvicultural prescriptions meet the objectives and requirements of the relevant land management plan.*

**Response:** The Forest already provided an adequate and thorough response to the issue in the Response to Comments section included in the Draft DN (Appendix A, p.A-5, Response to Comment 12). The Responsible Official also found that the activities proposed pursuant to Alternative 2 (the selected alternative) are consistent with the Forest Plan's standards, goals, and objectives (Strychnine Pine EA, pp. 176-178; draft DN, pp.14-17). Based on my review of the Strychnine Pine EA, the Draft DN, and the content in the project file, I find that the issue and suggested remedy do not require further discussion or instructions to the Responsible Official.

**Issue 3A:** *The objector contends that the Forest violated NFMA by failing to provide data and text demonstrating that soil, slope, or other watershed conditions will not be irreversibly damaged by seedtree and shelterwood silvicultural prescriptions.*

**Response:** The Forest already provided an adequate and thorough response to the issue in the Response to Comments section included in the Draft DN (Appendix A, p.A-3, Response to Comment 6). Based on my review of the Strychnine Pine EA, the Draft DN, and the content in the project file, I find that the issue and suggested remedy do not require further discussion or instructions to the Responsible Official.

**Issue 4:** *The objector contends that the Forest improperly excluded from its analysis potential effects to air quality, old growth habitat, heritage resources, scenic quality, snag habitat, noxious weeds and threatened and endangered species of fish and plants. Thus, the objector alleges that the EA is not in compliance with NEPA and the implementing regulations at 40 CFR §§ 1500.1(b) and 1508.8.*

**Response:** With respect to the objection regarding the project's potential effects on air quality, old growth habitat, heritage resources, scenic quality, snag habitat and noxious weeds, the Forest provided an adequate and thorough response to the issue in the Response to Comments section included in the Draft DN (Appendix A, p.A-2, Response to Comment 3). Based on my review of the Strychnine Pine EA, the Draft DN, and the content in the project file, I find that these issues and suggested remedy do not require further discussion or instructions to the Responsible Official.

With respect to the allegation that the Forest improperly failed to analyze the project's effects on threatened and endangered species of fish and plants, the Forest concluded that these species are not present the project area. Therefore, no additional analysis was necessary. The listed fish and plant species for Latah and Benewah Counties, where this project lies, are bull trout, Snake River steelhead trout, Snake River fall chinook salmon, Spalding's catchfly and water howellia. See Draft DN, p. 13; Strychnine Pine EA, p. 49-50. However, the Forest determined that none of these species is present in the project area. See Strychnine Pine EA, p. 49-50 (bull trout, Snake River steelhead trout, Snake River fall chinook salmon), p. 66 (water howellia), p. 66-67 (Spalding's catchfly); see also Biological Assessment, p. 22. Moreover, while Benewah County has critical habitat designated for bull trout, the Forest determined that none of the habitat is within the project area or in proximity to the project area, and thus, the project would have no effect on critical habitat for bull trout. See Draft DN, p. 13; see also Biological Assessment, p. 22. For these reasons, no additional analysis on threatened and endangered species of fish or plants is required.

**Issue 4A:** *The objector alleges that the Responsible Official failed to analyze the potential effects of 1) road reconditioning and reconstruction; 2) road decommissioning and storage; and 3) soil restoration.*

*Thus, the objector claims that the EA is not in compliance with NEPA and the corresponding regulations at 40 CFR §§ 1500.1(b) and 1508.8.*

**Response:** While the heading is potentially unclear, the Forest did consider the potential effects of road reconditioning and reconstruction, road decommissioning and storage, and soil restoration. Ultimately, the Forest determined that these activities would either have beneficial effects or would occur in areas that are already disturbed and would not contribute to additional detrimental soil disturbance. *See* Strychnine Pine EA, p. 83. Because the Forest did consider the potential effects of these actions, I find that this issue and suggested remedy do not require further discussion or instructions to the Responsible Official.

**Issue 5:** *The objector contends that the EA fails to analyze an adequate range of alternatives in violation of NEPA and the implementing regulations. Specifically, the objector alleges that the EA should have analyzed an action alternative that applies “a Cohen fine fuels removal as a reasonable alternative to the Proposed Action.”*

**Response:** The Palouse District FMO created an additional document that considered and analyzed the information submitted by the objector, as well as the objector’s suggestion that the EA should have analyzed an action alternative that applies a Cohen fine fuels removal method (Doc19b01).

In her analysis the FMO explained that the Cohen method largely pertains to actions taken by individual property owners, and that the Forest Service is limited in what fuel reduction activities it can prescribe on private property. Because the activities proposed in the Strychnine Pine EA are, in large part, limited to treatments on National Forest System Lands, the Forest concluded that:

The treatment within the home ignitions zone described by Cohen (1999, 2000) and advocated for by Mr. Artley, while relevant in the broad sense for fuel treatments, do not apply within the project area because there are no existing residences within the project area (Doc19b01, p. 3).

The FMO also explained that the Forest did not consider a separate action alternative that applies a Cohen fine fuels removal method because: 1) the Cohen method largely pertains to actions taken by individual property owners and there are no existing residences within the project area; and 2) the alternative could be “Illegal as it would require allocated National Forest System funds to enhance private lands for private interests.” *Id.* at 4. Furthermore, such an action alternative would not address the other project needs, namely restoring white pine and other seral tree species and improving water quality conditions.

**Instruction:** The Palouse District FMO’s write-up was drafted after the Strychnine Pine EA and Draft DN were released for objection. I am instructing the Responsible Official to analyze the information presented by objector concerning Dr. Cohen’s research and, in the errata to the Strychnine Pine EA, consider an alternative that uses the Cohen fine fuels removal method.

**Issue 6:** *The objector contends that the “American people do not want their national forests logged for any reason, yet the Responsible Official pursues this action anyway.”*

**Response:** While this comment reflects the objector’s opinion about the proposed project, the proposed timber harvest activities meet the purpose and need for the project. Specifically, the Forest evaluated the project area’s existing vegetation conditions and determined that, among other things, there is a need to restore white pine and other seral tree species in order to make these stands more resistant to insects and

disease and that this goal can be accomplished through regeneration harvest. See Strychnine Pine EA, p 3; Draft DN, p.7. Based on my review of the Strychnine Pine EA, the Draft DN, and the content in the project file, I find that the issue and suggested remedy do not require further discussion or instructions to the Responsible Official.

**Issue 7:** *The objector contends that the project's goal to eliminate natural disturbance events (fire, insect activity, and disease) from the project area will ultimately "impair and damage the proper functioning of the species that depend on these events." Therefore, the objector asks that the Responsible Official remove activities that address these issues from the proposed project and consider the information provided by the objector.*

**Response:** The Forest already provided an adequate and thorough response to this issue in the Response to Comments section included in the Draft DN (Appendix A, p.A-6, Response to Comment 13). Based on my review of the Strychnine Pine EA, the Draft DN, and the content in the project file, I find that the issue and suggested remedy do not require further discussion or instructions to the Responsible Official.

With respect to objector's Opposing Views Attachments 8 and 14, the Forest reviewed and considered the submitted attachments, and clearly explained why the referenced information was not relevant to the current project or appropriate given the existing conditions or resource concerns in the project area. See Draft DN, Appendix A, p. A-7 to A-10.

The Forest did not receive objector's Opposing Views Attachments 5 or 17. Under the objection regulations, proponents of objections are not allowed to incorporate documents by reference, with the exception of the documents listed at 36 CFR § 218.8(b) (1)-(4). Because the Forest did not receive Opposing Views Attachments 5 or 17, and because these documents do not fall within the regulatory exceptions, there will be no further consideration of the objection with respect to these documents.

**Issue 8:** *The objector contends that the Forest Service failed to evaluate and disclose the potential health effects caused by exposure to glyphosate in the EA, in violation of NEPA and the implementing regulations at 40 CFR §§ 1501.2(b), 1502.16(a)-(b), 1508.8(b) and 1508.27(b)(2), and Executive Order 13045.*

**Response:** As an initial matter, the Strychnine Pine project is not a "covered regulatory action" pursuant to Executive Order 13045. Under Executive Order 13045, a "covered regulatory action" means:

"Any substantive action in rulemaking, initiated after the date of this order or for which a Notice of Proposed Rulemaking is published 1 year after the date of this order that is likely to result in a rule that may:

(a) be 'economically significant' under Executive Order 12866 []; and

(b) concern an environmental health risk or safety risk that an agency has reason to believe may disproportionately affect children." (Executive Order 13045, 2-202).

Furthermore, the Palouse Noxious Weeds Environmental Assessment (2000) addresses the treatment of noxious weeds on the Palouse Ranger District. The project area is covered by the analysis in this Assessment and thus there is not a need to separately address the effects of noxious weed treatment in the

Strychnine Pine EA. Any treatment of invasive plants in the project area will be consistent with the strategy outlined in the Assessment. See Strychnine Pine EA, p. 15; Draft DN, p. 7; Appendix A, p. A-9, Response to Attachment #9a.

**Instruction:** The Palouse Noxious Weeds Environmental Assessment is not included in the Reference section of the Strychnine Pine EA. Therefore, I am instructing the Responsible Official to include the Assessment in the errata to the Strychnine Pine EA.

**Issue 9:** *The objector contends that the Forest Service has violated NEPA, Executive Order 13514, and the Forest Service's Memo on Climate Change Considerations in Project-Level NEPA Analysis by failing to evaluate predicted the project's impacts to climate change and climate change impacts to forest resources and ecosystem services in the project area.*

**Response:** The Forest already provided an adequate and thorough response to the issue in the Response to Comments section included in the Draft DN (Appendix A, p.A-6, Response to Comment 16). The Forest also addressed the issue raised by the objector in its "Forest Carbon Cycling and Storage Report." (Doc10a02). The Forest acknowledges that this Report wasn't included in the project file, and has since included the Report in the project record. *Id.* Based on my review of the Strychnine Pine EA, the Draft DN, and the content in the project file, I find that the issue and suggested remedy do not require further discussion or instructions to the Responsible Official.

**Issue 10:** *The objector contends that the EA's affects analysis relies on biased scientific literature. The objector submitted literature that he claims presents "responsible opposing viewpoints" that were improperly excluded in the EA's "References" section in violation of NEPA. Specifically, the objector states that pursuant to NEPA, the Forest was required to take a "hard look" at the documents and disclose science that is both pro and con as it relates to the proposed project.*

**Response:** With respect to the objector's claim that the Forest Service's analysis was based on biased literature, the Forest reviewed and considered the submitted attachments, and clearly explained why the referenced information either: 1) supported the project analysis; or 2) was not relevant to the current project or appropriate given the existing conditions or resource concerns in the project area. See Draft DN, Appendix A, pp. A-7 to A-10; see also Draft DN, p. 17. These conclusions are supported by adequate analysis and rationale made available in the Strychnine Pine EA, the Draft DN, and the content in the project file. Therefore, I find that the issue and suggested remedy do not require further discussion or instructions to the Responsible Official.

**Issue 11:** *The objector contends that the Responsible Official violated the Administrative Procedure Act, NEPA, and the implementing regulations at 40 CFR §§ 1500.1(b)-(c), 1500.2(e)-(f) because she did not incorporate the literature and references submitted by the objector into the References section of the EA. The objector also contends that the EA is flawed because the "References section of the final EA contains references written by an inappropriately large percentage of USDA employees. The references section excludes science literature authored by independent scientists that detailed how logging activities similar to that proposed by this project may cause natural resource damaging."*

**Response:** As noted in the response to Issue 10, the Forest reviewed and considered the submitted attachments, and clearly explained why the referenced information either: 1) supported the project

analysis; or 2) was not relevant to the current project or appropriate given the existing conditions or resource concerns in the project area. *See* Draft DN, Appendix A, pp. A-7 to A-10; *see also* Draft DN, p. 17. These conclusions are supported by adequate analysis and rationale made available in the Strychnine Pine EA, the Draft DN, and the content in the project file. The Forest also documented its consideration of the best available science. *See* Draft DN, p. 17. Therefore, I find that the issue and suggested remedy do not require further discussion or instructions to the Responsible Official.

**Issue 12:** *The objector contends that the proposed action does not respond to the stated purpose and need and thus violates NFMA and the NEPA implementing regulations at 40 CFR §§ 15001.(c), 1500.2(e)-(f). Specifically, the objector states that activities associated with the proposed action will not meet the stated goal of improving water quality conditions. Rather, the objector states that best science shows that “any and all new road construction and some reconstruction is likely to produce sediment that will find its way to streams in many cases.”*

**Response:** The Forest evaluated the project area’s existing watershed conditions and determined that, among other things, there is a need to “improve water quality conditions (i.e. reducing stream sediment) and soil productivity to initiate recovery of watershed functions”, and that this goal could be accomplished through decommissioning of roads, reducing road densities and controlling erosion sources, and placing certain roads into long-term storage. *See* Strychnine Pine EA, pp. 3-4; Draft DN, pp. 2-3 and 7.

The Forest found that all of the action alternatives would improve water quality conditions and increase soil productivity. *See* Strychnine Pine EA, p. 33; Draft DN, p. 7. Further, the Forest determined that implementing the development of permanent or temporary roads pursuant to the proposed action would not result in a measurable increase in sediment delivery to streams. Strychnine Pine EA at 105. In fact, the Forest concluded that while all of the action alternatives would have minor short-duration sediment increases during the proposed road-related activities, ultimately the activities “would provide a net benefit to water quality and flow by improving existing road drainage and restoring hydrologic function through road decommissioning or storage activities.” *Id.* at 98.

Similarly, the Forest found that implementation of project design features and implementation of BMPs would reduce the potential for erosion and prevent the development of channelized flow in vegetation treatment units. *Id.* at 109. Thus, the Forest concluded that the proposed action would not result in a measurable increase in sediment delivery to streams from any proposed timber harvest, site preparation, or fuels treatments. *Id.*

The Forest reviewed and considered the Opposing Views Attachment #4 submitted by the objector, and clearly explained why the referenced information either: 1) supported the project analysis; or 2) was not relevant to the current project or appropriate given the existing conditions or resource concerns in the project area. Given these findings, the Forest determined that the appropriate models, methodology and science were applied in the Strychnine Pine EA. *See* Draft DN, p. 17, Appendix A, p. A-9, Attachment #4.

Despite these findings, the Forest still responded to comments received during the public comment process and considered a watershed improvement-only alternative. However, this alternative was eliminated from further consideration because it would not address the need to improve species diversity

and balance vegetative successional stages across the landscape. Nor would the watershed improvement-only alternative address the need to address the build-up of fuels and attempt to decrease the risk of a high-intensity/high severity wildfire in the project area. For these reasons, this alternative was not carried forward for further analysis. See Strychnine Pine EA, p. 32; Draft DN, p. 8.

For these reasons, I find that the proposed action is responsive to the stated watershed improvement purpose and need for this project. These conclusions are supported by adequate analysis and rationale made available in the Strychnine Pine EA, the Draft DN, and the content in the project file, and therefore, no further discussion or instructions to the Responsible Official are necessary.

### CONCLUSION

I have reviewed your assertions that the project violates various environmental laws and regulations and the Forest Plan. I have found three items the Responsible Official is to correct:

- I am instructing Responsible Official to finalize the Landscape Architect's report and include it in the final project record. The findings of the report should also be discussed in the errata to the Strychnine Pine EA.
- I am instructing the Responsible Official to analyze the information presented by you concerning Dr. Cohen's research and, in the errata to the Strychnine Pine EA, consider an alternative that uses the Cohen fine fuels removal method.
- I am instructing the Responsible Official to include the Palouse Noxious Weeds Environmental Assessment in the errata to the Strychnine Pine EA.

Once those three items are complete, the project will be in compliance with all laws, regulations, policies, and the Forest Plan. At that point the Forest Supervisor may sign the Decision Notice for the Strychnine Pine project.

Sincerely,



for DAVID E. SCHMID  
Acting Regional Forester

cc: Cheryl Probert, Norma Staaf, George Harbaugh, Ray G Smith

